

MANDATE

10-2083-cv
Greenberg v. Aetna Life Insurance Company

N.Y.S.D. Case #
09-cv-6183(WHP)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of May, two thousand eleven.

PRESENT: WILFRED FEINBERG,
ROGER J. MINER,
RICHARD C. WESLEY,
Circuit Judges.

USDC SDNY
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ELECTRONICALLY FILED
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DATE FILED: June 1, 2011

HAROLD L. GREENBERG,

Plaintiff-Appellant,

-v.-

10-2083-cv

AETNA LIFE INSURANCE COMPANY, THE SUNGUARD DATA SYSTEMS,
INC. LONG TERM DISABILITY PLAN,

Defendants-Appellees.

FOR APPELLANT: ABA HEIMAN, Fusco, Brandenstein & Rada,
P.C., Woodbury, NY.

FOR APPELLEES: MICHAEL H. BERNSTEIN, Sedgwick, Detert,
Moran & Arnold LLP, New York, NY.

Appeal from the United States District Court for the
Southern District of New York (Pauley, J.).

MANDATE ISSUED ON 06/01/2011

1 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
2 **AND DECREED** that the judgment of the district court is
3 **AFFIRMED.**

4 Plaintiff-appellant Harold L. Greenberg appeals from a
5 judgment entered May 7, 2010, in the United States District
6 Court for the Southern District of New York (Pauley, *J.*) in
7 favor of Defendants-appellees Aetna Life Insurance Company
8 ("Aetna") and Sunguard Data Systems, Inc. Long Term
9 Disability Plan (collectively, "Defendants"). Greenberg
10 argues that the district court erred in finding that
11 substantial evidence supported Aetna's conclusion that his
12 disability was caused by a pre-existing condition. He
13 further argues that the court erred in determining that
14 Pennsylvania law controls the interpretation and
15 administration of the long-term disability policy (the
16 "policy"). We assume the parties' familiarity with the
17 underlying facts, the procedural history, and the issues
18 presented for review.

19 Where a benefit plan governed by the Employee
20 Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-
21 1461, gives the plan's administrator discretionary authority
22 to determine eligibility under the plan or to construe the

1 plan's terms, the administrator's decisions are reviewed for
2 abuse of discretion. See *Firestone Tire & Rubber Co. v.*
3 *Bruch*, 489 U.S. 101, 115 (1989). "[A] court may not
4 overturn the administrator's denial of benefits unless its
5 actions are found to be arbitrary and capricious, meaning
6 'without reason, unsupported by substantial evidence or
7 erroneous as a matter of law.'" *McCauley v. First Unum Life*
8 *Ins. Co.*, 551 F.3d 126, 132 (2d Cir. 2008) (quoting *Pagan v.*
9 *NYNEX Pension Plan*, 52 F.3d 438, 442 (2d Cir. 1995)).

10 Here, the district court determined that the
11 administrator enjoyed discretionary authority to determine
12 eligibility under and to interpret the terms of the plan.
13 Since it found Aetna's decisions to have been supported by
14 substantial evidence, it granted judgment in favor of
15 Defendants. On *de novo* review, we likewise determine that
16 Aetna's decisions were supported by substantial evidence.
17 Accordingly, we affirm the district court's judgment.

18 "We review the district court's choice of law *de novo*."
19 *Fin. One Pub. Co. Ltd. v. Lehman Bros. Special Fin., Inc.*,
20 414 F.3d 325, 331 (2d Cir. 2005). Greenberg argues that the
21 policy should be deemed "delivered" in New York and thus New
22 York law should govern to the extent not preempted by ERISA.

1 However, the policy on its face elects Pennsylvania law as
2 controlling its interpretation and stipulates that it is to
3 be delivered in Pennsylvania. Greenberg has not provided
4 any evidence to the contrary. Accordingly, as permitted
5 under Pennsylvania law, and pursuant to the policy's terms,
6 he is permanently excluded from eligibility.

7 We have considered Greenberg's remaining contentions
8 and find them to be without merit.

9 For the foregoing reasons, the judgment of the district
10 court is hereby **AFFIRMED**.

11
12 FOR THE COURT:
13 Catherine O'Hagan Wolfe, Clerk
14
15



A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

